

VICTIMS' RIGHTS — History and constitutional challenges — Revised 3/2010

The Arizona Supreme Court considered a constitutional challenge to the Victims' Bill of Rights in *Slayton v. Shumway*, 166 Ariz. 87, 800 P.2d 590 (1990). The Victims' Bill of Rights began as an initiative proposition. Before the proposition went on the ballot, opponents brought suit in the Maricopa County Superior Court, arguing that the proposition violated the "single subject rule" of Article 4, part 2, § 13 of the Arizona Constitution¹, which prevents combining different proposals and the insertion of unrelated provisions into initiative proposals. He claimed that subsection eleven of the proposition would give the state legislature rulemaking authority, contrary to article 6, § 5(5) of the Arizona Constitution². Subsection eleven read:

11. [A victim of crime has a right] to have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights."³

Slayton argued that this subsection would insert an unrelated provision into the new proposal. The proponents of the Victims' Bill of Rights argued that the subsection limited the legislature's power to amend or repeal rules to rules

¹ That section provides:
§ 13. Subject and title of bills
Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

² That section provides:
§ 5. The Supreme Court shall have:
* * *5. Power to make rules relative to all procedural matters in any court.

³ The text of subsection eleven of the proposition was identical to that currently in the State Constitution.

designed to serve "the limited purpose of protecting victims' rights," and that with this limitation, the provision did not violate the "single subject rule." *Id.* at 83, 800 P.2d at 595. The Arizona State Supreme Court upheld the provision. That Court agreed that Article 6, § 5(5) of the Arizona Constitution gives exclusive rulemaking power to the Arizona State Supreme Court, and that such authority is inherent and explicit. However, the Court held that the narrow construction of the provision did not encroach on the Court's rulemaking powers.

The Arizona Supreme Court revisited the issue of separation of powers in *State ex. rel. Napolitano v. Brown*, 194 Ariz. 340, 982 P.2d 815 (1999). In that case, a death row inmate argued that the time limits imposed by A.R.S. § 13-4234 for filing his post-conviction relief proceeding impermissibly conflicted with the time limits set under Rule 32.4(c), Ariz. R. Crim. P. The State argued that the legislature enacted the statute's time limits "pursuant to paragraph ten of the Victims' Bill of Rights, which mandates that crime victims have the right '[t]o a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.'" *Id.* at 342 ¶ 8, 982 P.2d at 817. The Arizona Supreme Court did not agree, finding that the statute was not changed to protect or implement victims' rights, but rather to allow Arizona to use the "opt-in" provisions of the federal habeas legislation, the Antiterrorism and Effective Death Penalty Act. *Id.* at 342 ¶ 9, 982 P.2d at 817. Asserting the separation of powers, the Court stated:

In Arizona, the legislature is endowed with the legislative power of the State, and has plenary power to consider any subject within the scope of government unless the provisions of the Constitution restrain it. Put another way, the legislature "has all power not

expressly prohibited or granted to another branch of the government."

The Constitution, however, vests the power to make procedural rules exclusively in this court. The Constitution also divides the powers of government into three separate departments and directs that "no one of such departments shall exercise the powers properly belonging to either of the others." Therefore, under the traditional separation of powers doctrine, the legislature lacks authority to enact a statute "if it conflicts with or 'tends to engulf'" this court's constitutionally vested rulemaking authority.

Id. at 342 ¶¶ 5-6, 982 P.2d at 817 [citations omitted]. The Court found the time limit unconstitutional and severed it from the balance of the statute, finding that the remainder of the statute was enforceable without the time limit. *Id.* at 344 ¶¶ 14-15, 982 P.2d at 819.

In *Day v. Superior Court*, 170 Ariz. 215, 823 P.2d 82 (App. 1991), the defendant moved to depose a victim and the trial court denied the motion. On appeal, the defense argued that the Victims' Bill of Rights had abrogated Rule 15.3 of the Arizona Rules of Criminal Procedure and therefore violated the separation of powers doctrine. The Court held that the rulemaking provision of the Victims' Bill of Rights dealt "only with procedural rules pertaining to victims and not with the substantive general subject of the rulemaking power." *Id.* at 216, 823 P.2d at 83 (*quoting Slayton v. Shumway*, 166 Ariz. 87, 92, 800 P.2d 590, 559 (1990)). Thus, the Court found the Victims' Bill of Rights constitutional and not in violation of the separation of powers doctrine.

In *Knapp v. Martone*, 170 Ariz. 237, 239, 823 P.2d 685, 687 (1992), the Arizona Supreme Court found that a victim's right to refuse an interview was procedural and therefore applied to cases pending on the date the Victims' Bill of

Rights became effective." The Court further stressed that Arizona courts must follow and apply the plain language and not make ad hoc exceptions to the constitutional rule based upon the perceived exigencies of each case.